STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0970

Gene Stengel,
Appellant,

vs.

Casey's Retail Company d/b/a Casey's General Stores, Inc.,
Respondent.

Filed February 6, 2023
Reversed and remanded
Cochran, Judge

Yellow Medicine County District Court
File No. 87-CV-21-209

Jennifer E. Olson, TSR Injury Law, Bloomington, Minnesota (for appellant)

Inga K. Kingland, James M. Susag, Nic S. Puechner, Larkin Hoffman Daly & Lindgren Ltd., Minneapolis, Minnesota (for respondent)

Taylor Brandt Cunningham, Conlin Law Firm, LLC, Minneapolis, Minnesota (for amicus curiae Minnesota Association for Justice)

Considered and decided by Reilly Presiding Judge; Bjorkman, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the summary-judgment dismissal of his negligence claim against respondent store owner, arguing that the district court erred by determining that no genuine issue of material fact exists as to whether respondent had actual or constructive

knowledge of the icy condition that caused appellant to slip and fall outside respondent's store. Because we agree with appellant that there is a genuine issue of material fact that precludes summary judgment, we reverse and remand.

FACTS

The following facts are either undisputed or based on the evidence viewed in the light most favorable to appellant Gene Stengel.[1]

On April 15, 2018, Stengel was injured after slipping and falling on ice outside a store owned by respondent Casey's Retail Company, doing business as Casey's General Stores Inc. (Casey's), in Granite Falls. The day before Stengel's fall, a spring blizzard left about 15 inches of heavy snow on the ground.

Casey's contracted with Soine Construction Inc. to plow the parking lot and shovel the sidewalk at the Casey's store in Granite Falls. Soine plowed the parking lot three times on April 14 and once on the morning of April 15. Soine also shoveled the sidewalk on the morning of April 15. The lot had already been plowed and the sidewalk shoveled by the time that Casey's cashier arrived for her early morning shift on April 15. Soine did not put down any salt or sand after plowing and shoveling.

At approximately 6:50 a.m., Stengel and his son stopped at Casey's store. Stengel operates his own commercial snow removal business. He and his son had been out plowing snow at several locations in the Granite Falls area prior to stopping at Casey's for a break.

[1] When reviewing a summary-judgment decision, appellate courts view the facts in the light most favorable to the party against whom summary judgment was granted. *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019).

Stengel pulled his truck up to the sidewalk in front of the store entrance. He parked and went into the store. When getting out of his truck, he did not notice that the parking lot was icy or slippery. He did see other vehicles parked in the parking lot. After spending approximately 11 minutes inside, Stengel walked back out of the store. As he stepped off the sidewalk into the parking lot, Stengel slipped and fell, seriously injuring his left knee and quadricep.

After the accident, Stengel made several statements about the weather-related conditions that contributed to his fall. In deposition testimony, Stengel stated that "[t]he conditions that I walked in on ultimately were not the conditions that I walked out into." He also testified that he took a different path coming out of the store than he had taken going into the store, and that the surface of the parking lot was "solid ice" where he fell. He noted the general conditions on the roads that day, as informed by his snow-removal expertise, explaining that "[t]he conditions underneath of the tires made the snow turn to ice." This testimony echoed his statement to an insurance investigator that the snow was "an extremely liquidy slushy type of snow that, once it's removed, freezes right to the parking lot instantly." In other words, "[o]nce [the snow] had been plowed, it was starting to refreeze." Stengel also told the investigator that when he first got out of his truck, the snow "had not [yet] developed that icy texture to it. . . . [S]o, [he] did not have a clue when [he] came back out that it was going to be just like glass."

The record also contains detailed statements by Casey's employees. The assistant manager, who was working in the store office when Stengel fell, told the insurance investigator that she was aware that the parking lot had been plowed that morning. She

was not sure exactly when it was plowed, but she believed that it was "within that half hour" before Stengel fell. She also stated that the area where Stengel fell "was snow covered but it was plowed snow covered." She noted that the snow removal company had not put any sand or salt down and that none of the employees "had gotten time to go outside to sand," though they had access to a pail of sand by the door. The assistant store manager further explained in deposition testimony that the snow removal company was not permitted by Casey's to use any deicing salt on the parking lot and sidewalks because they were newly built.

The cashier who was working when Stengel fell stated in deposition testimony that she arrived at the store on the day of the accident before her shift started at 6:00 a.m. She testified that there was snow on the Casey's sidewalk and parking lot but that the parking lot had already been plowed by the time she arrived at work that day. She acknowledged that a snowplow is "not able to get all of the snow or ice out just from plowing" and that "sometimes after a plow comes and plows the snow in a parking lot like Casey's, it can actually compact some of the snow onto the parking lot" and make it more slippery. She also acknowledged that snow can be "a slipping hazard for customers" and that the area where Stengel fell was heavily trafficked by customers. She speculated that "there might have been slippery spots" on the sidewalk and in the parking lot given the weather conditions, but she stated that she did not know for sure.

Stengel commenced this action against Casey's, alleging negligence. He asserted that Casey's had a duty to keep the area outside the store reasonably safe and that Casey's

had breached that duty by failing to inspect and maintain the area, keep the area in a state of reasonable repair and fit for its intended use, and warn of "a dangerous trap."

Casey's moved for summary judgment. Stengel opposed the motion. Following a motion hearing, the district court granted the motion and dismissed Stengel's complaint. The district court determined that summary judgment was appropriate because Stengel had "not produced any evidence from which a jury could reasonably find" that Casey's had actual or constructive knowledge of the icy condition of its parking lot.

Stengel appeals.

DECISION

We review summary-judgment decisions de novo. *City of Waconia v. Dock*, 961 N.W.2d 220, 229 (Minn. 2021). Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01; *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 172 (Minn. 2021). "A genuine issue of material fact exists when there is sufficient evidence regarding an essential element to permit reasonable persons to draw different conclusions." *St. Paul Park Refin. Co. v. Domeier*, 950 N.W.2d 547, 549 (Minn. 2020) (quotation omitted). When reviewing a summary-judgment decision, "we view the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving part[y]." *Henson*, 922 N.W.2d at 190 (quotation omitted). We are mindful that summary judgment is a "blunt instrument" and "[i]t should not be granted when reasonable persons could draw different conclusions from the evidence presented." *Staub v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 620 (Minn. 2021) (quotation omitted).

Stengel challenges the district court's summary-judgment dismissal of his negligence claim. "The basic elements of a negligence claim are: (1) existence of a duty of care; (2) breach of that duty; (3) proximate causation; and (4) injury." *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007). A district court may grant summary judgment in favor of the defendant on a negligence claim "when the record reflects a complete lack of proof" on any element. *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017) (quotation omitted).

The district court granted Casey's summary-judgment motion after determining that Stengel offered no evidence from which a jury could reasonably find the first element of his negligence claim: existence of a duty of care. "Generally, a defendant's duty to a plaintiff is a threshold question because in the absence of a legal duty, the negligence claim fails." *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011) (quotation omitted). "A property owner has a duty to use reasonable care to prevent persons from being injured by conditions on the property that represent foreseeable risk of injury." *Rinn v. Minn. State Agric. Soc'y*, 611 N.W.2d 361, 364 (Minn. App. 2000). But this duty does not require property owners to be "insurers of safety." *Id.* at 365. "Unless the dangerous condition actually resulted from the direct actions of a [property owner] or his or her employees, a negligence theory of recovery is appropriate only where the [property owner] had actual or constructive knowledge of the dangerous condition." *Id.*

A plaintiff may establish a defendant's constructive knowledge of a dangerous condition "through evidence that the condition was present for such a period of time so as to constitute constructive notice of the hazard." *Id.* "But speculation as to who caused the

dangerous condition, or how long it existed, warrants judgment for the [property owner]." *Id.* And where neither a defendant nor his or her employees have caused the dangerous condition, the burden is on the plaintiff to establish that the defendant had actual or constructive knowledge of it. *Wolvert v. Gustafson*, 146 N.W.2d 172, 173 (Minn. 1966).

Stengel argues that the district court erred by granting summary judgment to Casey's because a genuine issue of material fact exists as to whether Casey's had constructive notice of the icy condition that caused Stengel's fall. Stengel argues that record evidence supports a reasonable inference that Casey's employees should have known of the icy condition given that there had been a snowstorm the day before and the fact that the parking lot had been plowed up to an hour before the fall. To support his argument, Stengel points to evidence in the record that Casey's employees knew that the area where Stengel fell was still snowy even though it had been plowed, that a snowplow can compact snow and make it more slippery, and that slippery snow can be a hazard to customers.[2] Stengel argues that, based on this evidence, a reasonable jury could infer that Casey's employees should have known that slippery conditions were likely to form in the parking lot. In other words, he argues that Casey's had constructive notice of the dangerous condition.

Stengel asserts that the supreme court's decision in *Mayzlik v. Lansing Elevator Co.*, 63 N.W.2d 380 (Minn. 1954), supports his argument. In that case, the supreme court affirmed the denial of the defendant's motion for judgment notwithstanding the verdict for

[2] Stengel also asserted in an affidavit filed in district court that the snow in the parking lot likely became compacted and turned to ice after it was plowed.

the plaintiff, who was injured after slipping on ice and snow while loading a wagon in the driveway of defendant's grain elevator. *Mayzlik*, 63 N.W.2d at 382, 386. The supreme court determined that a reasonable jury could have inferred that the defendant had constructive notice of the slippery condition based on employee testimony that many vehicles typically drove over the packed snow on the driveway and that "sometimes the snow would get hard-packed from the tires and traffic." *Id.* at 383-84. Stengel argues that *Mayzlik* is analogous to this case because it also involved evidence "that there was snow on defendant's premises, that vehicles were driving on [the] premises where plaintiff fell, and that defendant knew that vehicles driving on snow can make hard-packed snow and ice."

By contrast, Casey's argues that Stengel failed to meet his burden to prove that Casey's had constructive knowledge of the icy condition. *See Wolvert*, 146 N.W.2d at 173 (noting that the plaintiff has the burden to prove constructive knowledge of a dangerous condition not caused by the defendant or his or her employees). Casey's asserts that the only relevant time period for purposes of determining constructive knowledge is the 11 minutes that Stengel spent inside the store, because Stengel told the insurance investigator that he believed that the snow on the ground turned to ice during that time period. And Casey's argues that the icy condition was therefore present for an insufficient length of time to charge Casey's with constructive notice of it.

To support this argument, Casey's cites caselaw in which defendant property owners were not charged with constructive notice of dangerous conditions that had been present for 30 minutes or less. In *Otis v. First Nat'l Bank*, for example, the supreme court

held that 20 minutes was an insufficient amount of time to give defendant-bank constructive notice of a puddle on the floor that had caused a customer to slip and fall. 195 N.W.2d 432, 433 (Minn. 1972). Similarly, this court held in *Rinn* that 30 minutes was an insufficient amount of time to give the defendant property owners constructive notice of a puddle on stairs that caused a spectator at a horse show to slip and fall. 611 N.W.2d at 365. Casey's therefore argues that it may not be charged with constructive notice that an icy spot had formed during the 11 minutes that Stengel was in the store or, at most, during the approximately 30 minutes that elapsed between when the Casey's parking lot was last plowed and Stengel's fall. Casey's argument, however, fails to consider other evidence in the summary-judgment record that supports different conclusions as to when the parking lot was last plowed and when the icy condition developed.

While this case presents a close question, we conclude that a genuine issue of material fact exists as to whether Casey's had constructive knowledge of the icy condition.[3] Viewing the facts in the light most favorable to Stengel, evidence in the record supports a finding that the parking lot was plowed an hour or more before Stengel arrived, not 30 minutes as Casey's argues. *See Henson*, 922 N.W.2d at 190. Specifically, the cashier working at the store on the day of the accident stated in deposition testimony that the parking lot had been plowed *before* she arrived at work for her 6:00 a.m. shift, more than an hour before Stengel fell at 7:01 a.m. Thus, while caselaw supports Casey's argument

[3] Because we conclude that a genuine issue of material fact exists as to whether Casey's had constructive notice of the icy condition, we need not address Stengel's argument that Casey's also had *actual* notice of the icy condition.

that the existence of a dangerous condition for only 20 to 30 minutes is legally insufficient to charge a defendant property owner with constructive notice, the longer timeframe present in this case presents a genuine issue of material fact as to whether Casey's employees should have known of the icy condition where Stengel fell. *See Otis*, 195 N.W.2d at 433; *Rinn*, 611 N.W.2d at 365. Based on the evidence to support a finding that the icy condition formed soon after the parking lot was last plowed and therefore existed for an hour or more before Stengel's fall, a reasonable jury might determine that sufficient time had elapsed to charge Casey's with constructive notice of the icy condition.

We are not persuaded otherwise by Casey's argument that, for purposes of analyzing the relevant timeframe, we should consider only the 11 minutes during which Stengel was inside the store. To support this argument, Casey's relies on Stengel's comments to the insurance investigator that "the snow was changing" on the morning of his fall and that, when he got out of his truck, "it had not [yet] developed that icy texture to it." But the record also shows that Stengel told the investigator that the snow was "an extremely liquidy slushy type of snow that, once it's removed, freezes right to the parking lot instantly." These statements are somewhat contradictory because the first one implies that the ice had not yet formed when Stengel arrived at Casey's, and the second one implies that the ice had formed as much as an hour or more before Stengel arrived, shortly after the parking lot was plowed.

Viewing this evidence and the record as a whole in the light most favorable to Stengel, we conclude that the statement on which Casey's relies is insufficient to justify summary judgment because Stengel's other statement supports an inference that the ice

could have formed shortly after the parking lot was plowed, an hour or more before Stengel arrived at Casey's on the morning of the fall. *See Henson*, 922 N.W.2d at 190 (explaining that "we view the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving part[y]" (quotation omitted)). In other words, the conflicting evidence is sufficient to create a genuine issue of material fact as to when the icy condition formed and whether Casey's should have known about it. *See Domeier*, 950 N.W.2d at 549 (explaining that an "issue of material fact exists when there is sufficient evidence regarding an essential element [of a claim] to permit reasonable persons to draw different conclusions" (quotations omitted)). In addition, Stengel stated in deposition testimony that he took different paths into and out of the store. Again, viewing the evidence in the light most favorable to Stengel, we must credit this assertion. And assuming, accordingly, that Stengel took different paths into and out of the store, the fact that he did not notice the icy condition when he first got out of his truck and entered the store does not preclude a reasonable inference that the condition already existed when he arrived at the store and that he simply did not encounter it until he returned to his truck about 11 minutes later.

In sum, we conclude that, viewing the facts in the light most favorable to Stengel as required by the summary-judgment standard, a genuine issue of material fact exists as to whether Casey's had constructive notice of the icy condition that caused Stengel's fall. Therefore, the district court erred by granting summary judgment on the basis that no record evidence shows that Casey's had constructive knowledge of the icy condition.

Reversed and remanded.